

Senate Bill No. 188

CHAPTER 187

An act to amend Sections 110, 1109, 2114, 2115, 2117, 6910, 8910, 12680, 25102, and 25113 of, and to repeal Sections 2108 and 2109 of, the Corporations Code, and to amend Section 15204 of the Financial Code, relating to corporations.

[Approved by Governor August 2, 1997. Filed with
Secretary of State August 4, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 188, Kelley. Corporations.

(1) Existing law requires a foreign corporation to file annually with the Secretary of State an officers' certificate setting forth specified data unless the corporation has outstanding securities listed on a national exchange or if all of its voting shares are owned by the corporation. Existing law also requires the Secretary of State, if a foreign corporation fails to file the statement, to forfeit the right of the foreign corporation to transact intrastate business, and provides procedures for relief from these forfeitures.

This bill would repeal these provisions and would make related changes.

(2) Existing law provides for, among other things, the filing for record in the office of the county recorder of any county in this state in which any of the real property of a disappearing corporation or disappearing other business entity is located of a certificate prescribed by the Secretary of State with respect to the real property of the disappearing corporation or disappearing other business entity, as specified.

This bill would remove that provision.

(3) Existing law, with respect to a credit union merger and the vesting of real property, provides for the filing in the office of the county recorder of any county in which any of the property of the disappearing credit union is located of a copy of a certificate of dissolution certified by the Secretary of State, as specified.

This bill would, instead, provide for the filing of certificates of merger and requisite attachments, as specified, for those purposes.

The people of the State of California do enact as follows:

SECTION 1. Section 110 of the Corporations Code is amended to read:

110. (a) Upon receipt of any instrument by the Secretary of State for filing pursuant to this division, if it conforms to law, it shall be filed

by, and in the office of, the Secretary of State and the date of filing endorsed thereon. Except for instruments filed pursuant to Section 1502, the date of filing shall be the date the instrument is received by the Secretary of State unless withheld from filing for a period of time pursuant to a request by the party submitting it for filing or unless in the judgment of the Secretary of State the filing is intended to be coordinated with the filing of some other corporate document which cannot be filed. The Secretary of State shall file a document as of any requested future date not more than 90 days after its receipt, including a Saturday, Sunday, or legal holiday, if the document is received in the Secretary of State's office at least one business day prior to the requested date of filing. An instrument does not fail to conform to law because it is not accompanied by the full filing fee if the unpaid portion of the fee does not exceed the limits established by the policy of the Secretary of State for extending credit in these cases.

(b) If the Secretary of State determines that an instrument submitted for filing or otherwise submitted does not conform to law and returns it to the person submitting it, the instrument may be resubmitted accompanied by a written opinion of the member of the State Bar of California submitting the instrument, or representing the person submitting it, to the effect that the specific provision of the instrument objected to by the Secretary of State does conform to law and stating the points and authorities upon which the opinion is based. The Secretary of State shall rely, with respect to any disputed point of law (other than the application of Sections 201, 2101, and 2106), upon that written opinion in determining whether the instrument conforms to law. The date of filing in that case shall be the date the instrument is received on resubmission.

(c) Any instrument filed with respect to a corporation (other than original articles) may provide that it is to become effective not more than 90 days subsequent to its filing date. In case such a delayed effective date is specified, the instrument may be prevented from becoming effective by a certificate stating that by appropriate corporate action it has been revoked and is null and void, executed in the same manner as the original instrument and filed before the specified effective date. In the case of a merger agreement, the certificate revoking the earlier filing need only be executed on behalf of one of the constituent corporations. If no revocation certificate is filed, the instrument becomes effective on the date specified.

SEC. 2. Section 1109 of the Corporations Code is amended to read:

1109. Whenever a domestic or foreign corporation or domestic or foreign other business entity having any real property in this state merges or consolidates with another corporation or with an other business entity pursuant to the laws of this state or of the state or place in which any constituent corporation or constituent other business



entity was incorporated or organized, and the laws of the state or place of incorporation or organization (including this state) of any disappearing corporation or disappearing other business entity provide substantially that the making and filing of the agreement of merger or consolidation or certificate of ownership or certificate of merger vests in the surviving or consolidated corporation or surviving other business entity all the real property of any disappearing corporation or disappearing other business entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of that disappearing corporation or disappearing other business entity is located of a copy of the agreement of merger or consolidation or certificate of ownership or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger or consolidation is effected, shall evidence record ownership in the surviving or consolidated corporation or surviving other business entity, of all interest of the disappearing corporation or disappearing other business entity in and to the real property located in that county.

SEC. 3. Section 2108 of the Corporations Code is repealed.

SEC. 4. Section 2109 of the Corporations Code is repealed.

SEC. 5. Section 2114 of the Corporations Code is amended to read:

2114. (a) A foreign corporation that has transacted intrastate business and has thereafter withdrawn from business in this state may be served with process in the manner provided in this chapter in any action brought in this state arising out of that business, whether or not it has ever complied with the requirements of this chapter.

(b) A foreign corporation that has surrendered its right to transact intrastate business pursuant to Section 2112 or 2113 may be served with process in any action upon a liability or obligation incurred within this state prior to that surrender by delivery of the process to the Secretary of State, or an assistant or a deputy to the Secretary of State pursuant to this chapter and no court order authorizing this service shall be required. The process shall be mailed in the manner prescribed in this chapter except that it shall be sent to the address to which process is authorized to be sent in the certificate of surrender or to the address of the surviving domestic corporation in the case of a surrender under Section 2113.

(c) If a foreign corporation that is qualified to transact intrastate business has its right to transact such business forfeited by the Franchise Tax Board pursuant to the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code), service of process on that corporation may be effected in the manner set forth in Sections 2110 and 2111, as if the right to transact intrastate business had not been forfeited.



(d) The fact that a corporation ceases to transact intrastate business without filing a certificate of surrender does not revoke the appointment of any agent for the service of process.

SEC. 6. Section 2115 of the Corporations Code is amended to read:

2115. (a) A foreign corporation (other than a foreign association or foreign nonprofit corporation but including a foreign parent corporation even though it does not itself transact intrastate business) is subject to the requirements of subdivision (b) if the average of the property factor, the payroll factor, and the sales factor (as defined in Sections 25129, 25132, and 25134 of the Revenue and Taxation Code) with respect to it is more than 50 percent during its latest full income year and if more than one-half of its outstanding voting securities are held of record by persons having addresses in this state. The property factor, payroll factor, and sales factor shall be those used in computing the portion of its income allocable to this state in its franchise tax return or, with respect to corporations the allocation of whose income is governed by special formulas or that are not required to file separate or any tax returns, which would have been so used if they were governed by this three-factor formula. The determination of these factors with respect to any parent corporation shall be made on a consolidated basis, including in a unitary computation (after elimination of intercompany transactions) the property, payroll, and sales of the parent and all of its subsidiaries in which it owns directly or indirectly more than 50 percent of the outstanding shares entitled to vote for the election of directors, but deducting a percentage of the property, payroll, and sales of any subsidiary equal to the percentage minority ownership, if any, in the subsidiary. For the purpose of this subdivision, any securities held to the knowledge of the issuer in the names of broker-dealers, nominees for broker-dealers (including clearing corporations), or banks, associations, or other entities holding securities in a nominee name or otherwise on behalf of a beneficial owner (collectively "Nominee Holders"), shall not be considered outstanding. However, if the foreign corporation requests all Nominee Holders to certify, with respect to all beneficial owners for whom securities are held, the number of shares held for those beneficial owners having addresses (as shown on the records of the Nominee Holder) in this state and outside of this state, then all shares so certified shall be considered outstanding and held of record by persons having addresses either in this state or outside of this state as so certified, provided that the certification so provided shall be retained with the record of shareholders and made available for inspection and copying in the same manner as is provided in Section 1600 with respect to that record. A current list of beneficial owners of a foreign corporation's securities provided to the corporation by one or more Nominee Holders or their agent pursuant to the requirements of Rule



14b-1(b)(3) or 14b-2(b)(3) as adopted on January 6, 1992, promulgated under the Securities Exchange Act of 1934, shall constitute an acceptable certification with respect to beneficial owners for the purposes of this subdivision.

(b) Except as provided in subdivision (c), the following chapters and sections of this division shall apply to a foreign corporation as defined in subdivision (a) (to the exclusion of the law of the jurisdiction in which it is incorporated):

Chapter 1 (general provisions and definitions), to the extent applicable to the following provisions;

Section 301 (annual election of directors);

Section 303 (removal of directors without cause);

Section 304 (removal of directors by court proceedings);

Section 305, subdivision (c) (filing of director vacancies where less than a majority in office elected by shareholders);

Section 309 (directors' standard of care);

Section 316 (excluding paragraph (3) of subdivision (a) and paragraph (3) of subdivision (f)) (liability of directors for unlawful distributions);

Section 317 (indemnification of directors, officers, and others);

Sections 500 to 505, inclusive (limitations on corporate distributions in cash or property);

Section 506 (liability of shareholder who receives unlawful distribution);

Section 600, subdivisions (b) and (c) (requirement for annual shareholders' meeting and remedy if same not timely held);

Section 708, subdivisions (a), (b), and (c) (shareholder's right to cumulate votes at any election of directors);

Section 710 (supermajority vote requirement);

Section 1001, subdivision (d) (limitations on sale of assets);

Section 1101 (provisions following subdivision (e)) (limitations on mergers);

Chapter 12 (commencing with Section 1200) (reorganizations);

Chapter 13 (commencing with Section 1300) (dissenters' rights);

Sections 1500 and 1501 (records and reports);

Section 1508 (action by Attorney General);

Chapter 16 (commencing with Section 1600) (rights of inspection).

(c) This section does not apply to any corporation (1) with outstanding securities listed on the New York Stock Exchange or the American Stock Exchange, or (2) with outstanding securities designated as qualified for trading as a national market security on the National Association of Securities Dealers Automatic Quotation System (or any successor national market system) if the corporation has at least 800 holders of its equity securities as of the record date of its most recent annual meeting of shareholders, or (3) if all of its voting shares (other than directors' qualifying shares) are owned



directly or indirectly by a corporation or corporations not subject to this section. For purposes of determining the number of holders of a corporation's equity securities under clause (2) of this subdivision, there shall be included, in addition to the number of recordholders reflected on the corporation's stock records, the number of holders of the equity securities held in the name of any Nominee Holder that furnishes the corporation with a certification pursuant to subdivision (a) provided that the corporation retains the certification with the record of shareholders and makes it available for inspection and copying in the same manner as is provided in Section 1600 with respect to that record.

(d) For purposes of subdivision (a), the requirements of subdivision (b) shall become applicable to a foreign corporation only upon the first day of the first income year of the corporation commencing on or after the 135th day of the latest income year during which the tests referred to in subdivision (a) have been met or during which a final order has been entered by a court of competent jurisdiction declaring that those tests have been met.

(e) For purposes of subdivision (a), the requirements of subdivision (b) shall cease to be applicable to a foreign corporation at the end of any income year of the corporation during which at least one of the tests referred to in subdivision (a) is not met or during which a final order has been entered by a court of competent jurisdiction declaring that one of those tests is not met, provided that a contrary order has not been entered before the end of the income year.

SEC. 7. Section 2117 of the Corporations Code is amended to read:

2117. (a) Every foreign corporation (other than a foreign association) qualified to transact intrastate business shall file, annually during the applicable filing period in each year, on a form prescribed by the Secretary of State, a statement containing: (1) the names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer; (2) the street address of its principal executive office; (3) the street address of its principal business office in this state, if any; and (4) a statement of the general type of business that constitutes the principal business activity of the corporation (for example, manufacturer of aircraft; wholesale liquor distributor; retail department store). If the officers of the corporation use other titles, the statement shall include the officers performing comparable duties under other titles. If the corporation has no officers, or has no officers who are natural persons, the statement shall include the names of natural persons performing comparable duties for the corporation pursuant to a management contract or other arrangement.

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service



of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as the agent has not terminated. If a natural person is designated, the statement shall set forth the person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

(c) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation shall file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the filing pursuant to Section 2105.

(d) Subdivisions (c), (d), (f), and (g) of Section 1502 apply to statements filed pursuant to this section except that "articles" shall mean the filing pursuant to Section 2105.

SEC. 8. Section 6910 of the Corporations Code is amended to read:

6910. Foreign corporations transacting intrastate business shall comply with Chapter 21 (commencing with Section 2100) of Division 1, except as to matters specifically otherwise provided for in this part and except that Section 2115 shall not be applicable.

SEC. 9. Section 8910 of the Corporations Code is amended to read:

8910. Foreign corporations transacting intrastate business shall comply with Chapter 21 (commencing with Section 2100) of Division 1, except as to matters specifically otherwise provided for in this part and except that Section 2115 shall not be applicable.

SEC. 10. Section 12680 of the Corporations Code is amended to read:

12680. Foreign corporations transacting intrastate business shall comply with Chapter 21 (commencing with Section 2100) of Division 1, except as to matters specifically otherwise provided for in this part and except that Section 2115 shall not be applicable.

SEC. 11. Section 25102 of the Corporations Code is amended to read:

25102. The following transactions are exempted from the provisions of Section 25110:

(a) Any offer (but not a sale) not involving any public offering and the execution and delivery of any agreement for the sale of securities pursuant to the offer if (1) the agreement contains substantially the following provision: "The sale of the securities that are the subject of this agreement has not been qualified with the Commissioner of Corporations of the State of California and the issuance of the securities or the payment or receipt of any part of the consideration therefor prior to the qualification is unlawful, unless the sale of

securities is exempt from the qualification by Section 25100, 25102, or 25105 of the California Corporations Code. The rights of all parties to this agreement are expressly conditioned upon the qualification being obtained, unless the sale is so exempt”; and (2) no part of the purchase price is paid or received and none of the securities are issued until the sale of the securities is qualified under this law unless the sale of securities is exempt from the qualification by this section, Section 25100, or 25105.

(b) Any offer (but not a sale) of a security for which a registration statement has been filed under the Securities Act of 1933 but has not yet become effective, or for which an offering statement under Regulation A has been filed but has not yet been qualified, if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under Section 8 of the act and no order under Section 25140 or subdivision (a) of Section 25143 is in effect under this law.

(c) Any offer (but not a sale) and the execution and delivery of any agreement for the sale of securities pursuant to the offer as may be permitted by the commissioner upon application. Any negotiating permit under this subdivision shall be conditioned to the effect that none of the securities may be issued and none of the consideration therefor may be received or accepted until the sale of the securities is qualified under this law.

(d) Any transaction or agreement between the issuer and an underwriter or among underwriters if the sale of the securities is qualified, or exempt from qualification, at the time of distribution thereof in this state, if any.

(e) Any offer or sale of any evidence of indebtedness, whether secured or unsecured, and any guarantee thereof, in a transaction not involving any public offering.

(f) Any offer or sale of any security in a transaction (other than an offer or sale to a pension or profit-sharing trust of the issuer) that meets each of the following criteria:

(1) Sales of the security are not made to more than 35 persons, including persons not in this state.

(2) All purchasers either have a preexisting personal or business relationship with the offeror or any of its partners, officers, directors or controlling persons, or managers (as appointed or elected by the members) if the offeror is a limited liability company, or by reason of their business or financial experience or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser’s own account (or a trust account if the purchaser



is a trustee) and not with a view to or for sale in connection with any distribution of the security.

(4) The offer and sale of the security is not accomplished by the publication of any advertisement. The number of purchasers referred to above is exclusive of any described in subdivision (i), any officer, director or affiliate of the issuer, or manager (as appointed or elected by the members) if the issuer is a limited liability company, and any other purchaser who the commissioner designates by rule. For purposes of this section, a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one person and a partnership, corporation or other organization that was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person. The commissioner may by rule require the issuer to file a notice of transactions under this subdivision. However, the failure to file the notice or the failure to file the notice within the time specified by the rule of the commissioner shall not affect the availability of this exemption. An issuer who fails to file the notice as provided by rule of the commissioner shall, within 15 business days after demand by the commissioner, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110.

(g) Any offer or sale of conditional sale agreements, equipment trust certificates, or certificates of interest or participation therein or partial assignments thereof, covering the purchase of railroad rolling stock or equipment or the purchase of motor vehicles, aircraft, or parts thereof, in a transaction not involving any public offering.

(h) Any offer or sale of voting common stock by a corporation incorporated in any state if, immediately after the proposed sale and issuance, there will be only one class of stock of the corporation outstanding that is owned beneficially by no more than 35 persons, provided all of the following requirements have been met:

(1) The offer and sale of the stock is not accompanied by the publication of any advertisement, and no selling expenses have been given, paid, or incurred in connection therewith.

(2) The consideration to be received by the issuer for the stock to be issued shall consist of (i) only assets (which may include cash) of an existing business enterprise transferred to the issuer upon its initial organization, of which all of the persons who are to receive the stock to be issued pursuant to this exemption were owners during, and the enterprise was operated for, a period of not less than one year immediately preceding the proposed issuance, and the ownership of the enterprise immediately prior to the proposed issuance was in the same proportions as the shares of stock are to be issued, or (ii) only cash or cancellation of indebtedness for money borrowed or both upon the initial organization of the issuer, provided all of the stock is issued for the same price per share, or (iii) only cash, provided the



sale is approved in writing by each of the existing shareholders and the purchaser or purchasers are existing shareholders, or (iv), in a case where after the proposed issuance there will be only one owner of the stock of the issuer, any legal consideration.

(3) No promotional consideration has been given, paid, or incurred in connection with the issuance. Promotional consideration means any consideration paid directly or indirectly to a person who, acting alone or in conjunction with one or more other persons, takes the initiative in founding and organizing the business or enterprise of an issuer, for services rendered in connection with the founding or organizing.

(4) A notice in a form prescribed by rule of the commissioner, signed by an active member of the State Bar of California, shall be filed with or mailed for filing to the commissioner not later than 10 business days after receipt of consideration for the securities by the issuer, which notice shall contain an opinion of the member of the State Bar of California that the exemption provided by this subdivision is available for the offer and sale of the securities. However, the failure to file the notice as required by this subdivision and the rules of the commissioner shall not affect the availability of this exemption. An issuer who fails to file the notice within the time specified by this subdivision shall, within 15 business days after demand by the commissioner, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110. The notice, except when filed on behalf of a California corporation, shall be accompanied by an irrevocable consent, in the form that the commissioner by rule prescribes, appointing the commissioner or his or her successor in office to be the issuer's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against it or its successor that arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the issuer. An issuer on whose behalf a consent has been filed in connection with a previous qualification or exemption from qualification under this law (or application for a permit under any prior law if the application or notice under this law states that the consent is still effective) need not file another. Service may be made by leaving a copy of the process in the office of the commissioner but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at its last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within the further time as the court allows.



(5) Each purchaser represents that the purchaser is purchasing for the purchaser's own account, or a trust account if the purchaser is a trustee, and not with a view to or for sale in connection with any distribution of the stock.

For the purposes of this subdivision, all securities held by a husband and wife, whether or not jointly, shall be considered to be owned by one person, and all securities held by a corporation that has issued stock pursuant to this exemption shall be considered to be held by the shareholders to whom it has issued the stock.

All stock issued by a corporation pursuant to this subdivision as it existed prior to the effective date of the amendments to this section made during the 1996 portion of the 1995–96 Regular Session that required the issuer to have stamped or printed prominently on the face of the stock certificate a legend in a form prescribed by rule of the commissioner restricting transfer of the stock in a manner provided for by that rule shall not be subject to the transfer restriction legend requirement and, by operation of law, the corporation is authorized to remove that transfer restriction legend from the certificates of those shares of stock issued by the corporation pursuant to this subdivision as it existed prior to the effective date of the amendments to this section made during the 1996 portion of the 1995–96 Regular Session.

(i) Any offer or sale (1) to a bank, savings and loan association, trust company, insurance company, investment company registered under the Investment Company Act of 1940, pension or profit-sharing trust (other than a pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or individual retirement account), or other institutional investor or governmental agency or instrumentality that the commissioner may designate by rule, whether the purchaser is acting for itself or as trustee, or (2) to any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of such a corporation that after the offer and sale will own directly or indirectly 100 percent of the outstanding capital stock of the issuer; provided the purchaser represents that it is purchasing for its own account (or for the trust account) for investment and not with a view to or for sale in connection with any distribution of the security.

(j) Any offer or sale of any certificate of interest or participation in an oil or gas title or lease (including subsurface gas storage and payments out of production) if (1) all of the purchasers: (i) are and have been during the preceding two years engaged primarily in the business of drilling for, producing, or refining oil or gas (or whose corporate predecessor, in the case of a corporation, has been so engaged), or (ii) are persons described in clause (1) of subdivision (i) of this section, or (iii) have been found by the commissioner upon written application to be substantially engaged in the business of



drilling for, producing, or refining oil or gas so as not to require the protection provided by this law (which finding shall be effective until rescinded), or (2) the security is concurrently hypothecated to a bank in the ordinary course of business to secure a loan made by the bank; provided each purchaser represents that it is purchasing for its own account for investment and not with a view to or for sale in connection with any distribution of the security.

(k) Any offer or sale of any security under, or pursuant to, a plan of reorganization under Chapter 11 of the federal bankruptcy law that has been confirmed or is subject to confirmation by the decree or order of a court of competent jurisdiction.

(l) Any offer or sale of an option, warrant, put, call, or straddle, and any guarantee of any of these securities, by a person who is not the issuer of the security subject to the right, if the transaction, had it involved an offer or sale of the security subject to the right by the person, would not have violated Section 25110 or 25130.

(m) Any offer or sale of a stock to a pension, profit-sharing, stock bonus or employee stock ownership plan provided that (1) the plan meets the requirements for qualification under Section 401 of the Internal Revenue Code, and (2) the employees are not required or permitted individually to make any contributions to the plan. The exemption provided by this subdivision shall not be affected by whether the stock is contributed to the plan, purchased from the issuer with contributions by the issuer or an affiliate of the issuer, or purchased from the issuer with funds borrowed from the issuer, an affiliate of the issuer or any other lender.

(n) Any offer or sale of any security in a transaction, other than an offer or sale of a security in a rollup transaction, that meets all of the following criteria:

(1) The issuer is (A) a California corporation or foreign corporation that, at the time of the filing of the notice required under this subdivision, is subject to Section 2115, or (B) any other form of business entity, including without limitation a partnership or trust organized under the laws of this state. The exemption provided by this subdivision is not available to a “blind pool” issuer, as that term is defined by the commissioner, or to an investment company subject to the Investment Company Act of 1940.

(2) Sales of securities are made only to qualified purchasers or other persons the issuer reasonably believes, after reasonable inquiry, to be qualified purchasers. A corporation, partnership, or other organization specifically formed for the purpose of acquiring the securities offered by the issuer in reliance upon this exemption may be a qualified purchaser if each of the equity owners of the corporation, partnership, or other organization is a qualified purchaser. Qualified purchasers include the following:

(A) A person designated in Section 260.102.13 of Title 10 of the California Code of Regulations.



(B) A person designated in subdivision (i) or any rule of the commissioner adopted thereunder.

(C) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons who are qualified purchasers.

(D) An organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, each with total assets in excess of five million dollars (\$5,000,000) according to its most recent audited financial statements.

(E) With respect to the offer and sale of one class of voting common stock of an issuer or of preferred stock of an issuer entitling the holder thereof to at least the same voting rights as the issuer's one class of voting common stock, provided that the issuer has only one-class voting common stock outstanding upon consummation of the offer and sale, a natural person who, either individually or jointly with the person's spouse, (i) has a minimum net worth of two hundred fifty thousand dollars (\$250,000) and had, during the immediately preceding tax year, gross income in excess of one hundred thousand dollars (\$100,000) and reasonably expects gross income in excess of one hundred thousand dollars (\$100,000) during the current tax year or (ii) has a minimum net worth of five hundred thousand dollars (\$500,000). "Net worth" shall be determined exclusive of home, home furnishings, and automobiles. Other assets included in the computation of net worth may be valued at fair market value.

Each natural person specified above, by reason of his or her business or financial experience, or the business or financial experience of his or her professional advisor, who is unaffiliated with and who is not compensated, directly or indirectly, by the issuer or any affiliate or selling agent of the issuer, can be reasonably assumed to have the capacity to protect his or her interests in connection with the transaction. The amount of the investment of each natural person shall not exceed 10 percent of the net worth, as determined by this subparagraph, of that natural person.

(F) Any other purchaser designated as qualified by rule of the commissioner.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or trust account, if the purchaser is a trustee) and not with a view to or for sale in connection with a distribution of the security.

(4) Each natural person purchaser, including a corporation, partnership, or other organization specifically formed by natural persons for the purpose of acquiring the securities offered by the issuer, receives, at least five business days before securities are sold to, or a commitment to purchase is accepted from, the purchaser, a

written offering disclosure statement that shall meet the disclosure requirements of Regulation D (17 C.F.R. 230.501 et seq.), and any other information as may be prescribed by rule of the commissioner; provided that the issuer shall not be obligated pursuant to this paragraph to provide this disclosure statement to a natural person qualified under Section 260.102.13 of Title 10 of the California Code of Regulations. The offer or sale of securities pursuant to a disclosure statement required by this paragraph in violation of Section 25401, or that fails to meet the disclosure requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall not render unavailable to the issuer the claim of an exemption from Section 25110 afforded by this subdivision. This paragraph does not impose, directly or indirectly, any additional disclosure obligation with respect to any other exemption from qualification available under any other provision of this section.

(5) (A) A general announcement of proposed offering may be published by written document only, provided that the general announcement of proposed offering sets forth the following required information:

- (i) The name of the issuer of the securities.
- (ii) The full title of the security to be issued.
- (iii) The anticipated suitability standards for prospective purchasers.
- (iv) A statement that (I) no money or other consideration is being solicited or will be accepted, (II) an indication of interest made by a prospective purchaser involves no obligation or commitment of any kind, and, if the issuer is required by paragraph (4) to deliver a disclosure statement to prospective purchasers, (III) no sales will be made or commitment to purchase accepted until five business days after delivery of a disclosure statement and subscription information to the prospective purchaser in accordance with the requirements of this subdivision.
- (v) Any other information required by rule of the commissioner.
- (vi) The following legend: “For more complete information about (Name of Issuer) and (Full Title of Security), send for additional information from (Name and Address) by sending this coupon or calling (Telephone Number).”

(B) The general announcement of proposed offering referred to in subparagraph (A) may also set forth the following information:

- (i) A brief description of the business of the issuer.
- (ii) The geographic location of the issuer and its business.
- (iii) The price of the security to be issued, or, if the price is not known, the method of its determination or the probable price range as specified by the issuer, and the aggregate offering price.

(C) The general announcement of proposed offering shall contain only the information that is set forth in this paragraph.



(D) Dissemination of the general announcement of proposed offering to persons who are not qualified purchasers, without more, shall not disqualify the issuer from claiming the exemption under this subdivision.

(6) No telephone solicitation shall be permitted until the issuer has determined that the prospective purchaser to be solicited is a qualified purchaser.

(7) The issuer files a notice of transaction under this subdivision both (A) concurrent with the publication of a general announcement of proposed offering or at the time of the initial offer of the securities, whichever occurs first, accompanied by a filing fee, and (B) within 10 business days following the close or abandonment of the offering, but in no case more than 210 days from the date of filing the first notice. The first notice of transaction under subparagraph (A) shall contain an undertaking, in a form acceptable to the commissioner, to deliver any disclosure statement required by paragraph (4) to be delivered to prospective purchasers, and any supplement thereto, to the commissioner within 10 days of the commissioner's request for the information. The exemption from qualification afforded by this subdivision is unavailable if an issuer fails to file the first notice required under subparagraph (A) or to pay the filing fee. The commissioner has the authority to assess an administrative penalty of up to one thousand dollars (\$1,000) against an issuer that fails to deliver the disclosure statement required to be delivered to the commissioner upon the commissioner's request within the time period set forth above. Neither the filing of the disclosure statement nor the failure by the commissioner to comment thereon precludes the commissioner from taking any action deemed necessary or appropriate under this division with respect to the offer and sale of the securities.

(o) An offer or sale of any security issued pursuant to a stock purchase plan or agreement, or issued pursuant to a stock option plan or agreement, where the security is exempt from registration under the Securities Act of 1933, as amended, pursuant to Rule 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions of which are hereby incorporated by reference into this section; provided that (1) the terms of any stock purchase plan or agreement shall comply with Sections 260.140.42, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, (2) the terms of any stock option plan or agreement shall comply with Sections 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, and (3) the issuer files a notice of transaction in accordance with rules adopted by the commissioner within 30 days after the initial issuance of any security under that plan, accompanied by a filing fee as prescribed by subdivision (y) of Section 25608.

SEC. 12. Section 25113 of the Corporations Code is amended to read:

25113. (a) All securities, whether or not eligible for qualification by coordination under Section 25111 or qualification by notification under Section 25112, may be qualified by permit under this section.

(b) (1) An application for a permit under this section shall contain any information and be accompanied by any documents as shall be required by rule of the commissioner, in addition to the information specified in Section 25160 and the consent to service of process required by Section 25165. For this purpose, the commissioner may classify issuers and types of securities.

(2) An applicant may file a small company application for permit under this section if it meets all of the following conditions:

(A) The applicant is: (i) a California corporation or a foreign corporation, which at the time of filing an application under this subdivision is subject to Section 2115, and neither corporation is a “blind pool” company, as that term is defined by the commissioner; (ii) not engaged in oil and gas exploration or production, or mining or other extractive industries; (iii) not an investment company subject to the Investment Company Act of 1940; and (iv) not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934.

(B) The total offering of voting common stock and preferred stock by the applicant to be sold in a 12-month period, within or outside this state, is limited to one million dollars (\$1,000,000), less the aggregate offering price for all securities sold (within the 12 months before the start, and during the offering, of the voting common stock or preferred stock) under Rule 504 of the Securities and Exchange Commission, in reliance on any exemption under subdivision (b) of Section 3 of the Securities Act of 1933, or in violation of subdivision (a) of Section 5 of that act, and immediately after the proposed sale and issuance there will be only one class of voting common stock.

(C) The minimum offering price of the voting common stock and preferred stock (and the conversion price if the preferred stock is convertible into the voting common stock) to be sold is two dollars (\$2) per share and the applicant files an undertaking with the commissioner that there will be no stock splits, stock dividends, spinoffs, or mergers for a period of two years from the close of the offering. The undertaking notwithstanding, the commissioner may approve a spinoff or merger pursuant to an application for qualification filed by an applicant.

(D) The net proceeds from the offering are to be expended in the operations of the business.

(E) The offering is made pursuant to a Small Corporate Offering Registration disclosure document based on the Form U-7 as adopted by the North American Securities Administrators Association and any additional requirements as the commissioner shall prescribe, that may include, but not be limited to, investor suitability and due diligence investigation requirements.



(F) The application and disclosure document is reviewed and signed by a majority of the members of the board of directors of the applicant.

(G) The application shall contain that information and be accompanied by those documents required by rule of the commissioner, in addition to the information specified in Section 25610 and the consent to service of process required by Section 25165.

(c) Qualification of securities under this section becomes effective upon the commissioner issuing a permit authorizing the issuance of those securities.

SEC. 13. Section 15204 of the Financial Code is amended to read:

15204. (a) Upon any merger effectuated as provided in this article, all property, property rights, and interests of the merged credit union shall vest in the surviving credit union, without deed, endorsement or other instruments of transfer, and all debts, obligations and liabilities of the merged credit union are assumed by the surviving credit union under whose charter the merger has been effected. Thereafter the charter of the merged credit union is void, and the existence of the merged credit union as a legal entity separate from the surviving credit union terminates.

(b) Whenever a credit union having any real property in this state merges with another credit union and vests that real property in the surviving credit union, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing credit union is located of the certificates of merger and requisite attachments, as required by Section 15202, shall evidence record ownership in the surviving credit union of all interest of the disappearing credit union in and to the real property located in that county.

